

## R E M A R K S

- Claims **10-61** are currently pending;
- Claims **10-41** have been withdrawn;
- Claims **42-61** are rejected.
- Of the pending claims, claims **42, 43, 49 and 50** are independent;
- Claims **42-61** are in condition for allowance.

### 1. Section 102 Rejections

Claims **42-55, 57-58 and 60-61** stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,012,983 to Walker et al. ("Walker" herein). Applicants respectfully traverse the rejection of these claims based on the reasons presented below.

#### 1.1 Independent Claims 42, 43, 49 and 50

It is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully traverse these rejections for the reasons set forth below.

The Examiner asserted that Walker discloses the recited elements of claims **42, 43, 49 and 50** including "determining a player would like to communicate with another (3:28-42, 10:44-47) ... supplying the player with a communication device (3:55-56, ref 6 – pager or cellular telephone) ...

enabling communication between player and individual via the portable communication device (sic)". (Office Action, page 2, section 2).

Applicants assert that, contrary to the Examiner's assertions, each of independent claims **42, 43, 49 and 50** recite the following limitation that is not taught or suggested by Walker:

- *enabling communication between the player and the individual via the portable communication device*

Applicants note that the Examiner once again offers no citation for the recited step of *enabling communication between the player and the individual via the portable communication device* other than by cryptic reference to "(sic)". However, in the Response to Arguments section of the Office Action, The Examiner states that "Regarding Applicants' remark that Walker lacks enabling communication between player and the individual via the portable communication device, the examiner disagrees ... since Applicants' remarks lack consideration of Walker's teachings as a whole in that Walker states the player can increase the credit balance by phoning the casino and authorizing the casino personnel to increase the credit balance on the machine and that remote communications with the player permit the player both to enjoy the ongoing play, and to alter any pre-established, limiting criteria, for example relating to funding, may also be altered remotely, through a telephone call or appropriate communication to casino personnel (sic)." (Office Action, page 4, section 6).

Applicants allow that the Examiner's assertions recited above comprise a generally accurate restatement of the specification of Walker. Specifically, Walker discloses, at col. 3, lines 28-42 the following:

The present invention is directed generally to automated play of a gaming device. A player enters player identifying information and player parameter selections at a gaming device. The gaming device stores the player parameter selections and proceeds to initiate automated play of the gaming device. Such automated play occurs while the gaming device is unattended by the player. Furthermore, no other player may use the gaming device during such automated play. Remote communications with the player permit the player both to enjoy the ongoing play, and to alter any pre-established, limiting criteria, for example relating to funding, by returning to the machine and making appropriate adjustments. Some limitations may also be altered remotely, through a telephone call or appropriate communication to casino personnel.

As is evident from this passage, and congruent with the Examiner's description of same, the player can remotely enjoy ongoing play of the gaming device. If the player wishes to alter a limiting criteria, the player may do so "by returning to the machine and making appropriate adjustments". Conversely, the player may alter the limiting criteria remotely through a telephone call or other communication to casino personnel. It is therefore clear that the player can return to the gaming device to make alterations absent any communication to another individual, or, conversely, can remotely communicate with an individual, such as casino personnel. Furthermore, it is abundantly evident that such remote communications refer to communications made by a player that is remote from the gaming device.

Therefore, assuming, arguendo, that these communications between the player and the casino personnel teach *enabling communication between the player and the individual via the portable communication device* as recited in claims **42, 43, 49 and 50**, Walker fails to disclose all of the

elements of claims **42, 43, 49 and 50** as the following discussion makes clear.

With specific reference to claim **42**, there is recited *determining that a player at a gaming device would like to communicate with another*. Applicants note that this is the only instance in claim **42** whereat a reference to the player is modified by a prepositional phrase comprising a limitation. Specifically, it is clearly recited that the player is *at a gaming device*. Applicants assert that a player at a gaming device is, in fact, the polar opposite of a player located remotely from a gaming device. As noted above, if one assumes a player in communication with a casino personnel as taught by Walker to be the recited player and individual, respectively, of claim **42**, it is clear that the player of Walker is not at a gaming device as claimed. Quite the opposite. In fact, in such an instance, the player of Walker is most emphatically remote from the gaming device. It is therefore clear that Walker does not teach *enabling communication between the player and the individual via the portable communication device* wherein the player is *at a gaming device* as claimed. For at least this reason, claim **42** is in condition for allowance.

Applicants further note that claim **43** likewise recites *enabling communication between the player and the individual via the portable communication device* wherein the player is *at a gaming device*. For the reasons discussed above with reference to claim **42**, claim **43** is likewise in condition for allowance. Applicants further note that claims **49 and 50** incorporate all of the elements and limitations of claim **43** and, for the reasons discussed above, are therefore likewise in condition for allowance. As all of claims **44-48 and 51-61** depend upon claims **42, 43, 49 and 50** and incorporate all of the elements and

limitations of claims thereof, claims **44-48 and 51-61** are likewise in condition for allowance.

2. Section 103 Rejections

Claims **42** stands rejected under 35 U.S.C. 103(a) as being unpatentable over Finnegan. ("Finnegan" herein). Applicants respectfully traverse the rejection of this claim based on the reasons presented below.

The Examiner asserted that the disclosure of Finnegan "lacks [a disclosure of] obtaining a player identifier from the player as noted by Applicants remark (p 10-11). It would have been obvious to an artisan at a time prior to the invention to add obtaining an identifier from the player to Finnegan's method for security or to charge user account if not returned or for its use. Similarly, by analogy to a person checking out (i.e. borrowing) a book from a library by obtaining a persons identifier to have on record which person is assigned which book, it would have been obvious to obtain a player identifier for use of the cellular phones discussed by Finnegan to know which player obtained use of a phone to ensure its return or to know whom to charge for its services." (Office Action, page 3, section 3).

Applicants note that it is well settled, as stated at MPEP §2143, that "When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious." *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1395."

In light of this well established precept, Applicants respectfully assert, once again, that the Examiner's assertion supports the finding that the teachings of Finnegan, in fact, teach away from obtaining a player identifier.

Applicants allow that the practice of obtaining an identifier from a person seeking to check out a book for removal from the premises of a library is well known. Applicants note that it is further well known to not require an identifier of a person if the book is not to be "checked out". Such is the nature of open stacks. Applicants further note that many libraries have reading rooms where individuals may peruse books to their hearts content without providing an identifier. Once again, in such instances, an identifier is required only if the book in question is to be "checked out" or otherwise placed in the extended dominion and control of the person wishing to leave with the book.

Applicants note that Finnegan clearly states that "They could become the latest innovation in casino hospitality—"call girls" walking around blackjack tables and slot machines offering cellular phones to **people who don't want to leave a game to make a call.**" (emphasis added). It is evident from this description that the people to whom the phones are offered will not be removing the phones from the presence of the call girls. Specifically, the blackjack tables and slot machines around which the call girls ply their trade are the very "games" from which their prospective clients do not desire to leave. It is therefore evident that assuming, arguendo, that knowledge of checking out books was well known, such knowledge would be,

contrary to the Examiner's assertion, not analogous to the disclosures of Finnegan.

In fact, a proper application of the analogy of the Examiner makes clear that, as in a library when a person wishes to view a book without checking it out, the disclosure of Finnegan actually teaches away from obtaining an identifier from a person wishing to receive a phone from a call girl. Specifically, as the call girl is presumably at all times within close proximity to the user of the phone, Finnegan teaches away from obtaining an identifier to, as the Examiner asserts, "ensure its return or to know whom to charge for its services".

For all of these reasons, Applicants assert that claim **42** is in condition for allowance.

Applicants note that the Examiner further rejected claims **56** and **59** under 35 U.S.C. 103(a) as being unpatentable over Walker. Applicants refer to section 1.1 of this Action wherein it is asserted that claims **56** and **59** are in condition for allowance.

**Conclusion**

For the foregoing reasons it is submitted that all of claims **42-61** are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Jeffrey Ambroziak at telephone number (203) 461-7317 or via electronic mail at [jambroziak@walkerdigital.com](mailto:jambroziak@walkerdigital.com).

Applicants are filing this response within the three month statutory time for reply and, as a result, no petition for an extension of time is necessary. If any additional fees should be necessary for the present Application at this time (or any time during the prosecution of the present Application), please charge any such required fee to our Deposit Account No. 50-0271. Please credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

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Date

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